ALTS
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

October 16, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: **In the Matter of Application by Verizon New England Inc., Bell Atlantic Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc., for Authorization To Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 99-295**

Dear Secretary Salas:

Please find attached an original and one copy of the Comments of The ALTS Coalition with regard in the above-referenced proceeding.

Sincerely,

Teresa K. Gaugler

cc: Eric Einhorn, Common Carrier Bureau
Kathy Farroba, Common Carrier Bureau, Policy Division
Michele Carey, Chief, Common Carrier Bureau, Policy Division
Kathy Brown, Legal Advisor to Chairman Kennard
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc., for Authorization To Provide In-Region, InterLATA Services in Massachusetts	)	CC Docket 99-295

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES COALITION

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October 16, 2000

SUMMARY

ALTS is the leading national trade association representing facilities-based competitive local exchange carriers ("CLECs"). ALTS does not represent any of the major interexchange carriers ("IXCs"), and therefore its interest in this proceeding is singularly focused on ensuring that the Massachusetts local telephone market is truly open to competition and remains irreversibly open. In these Comments, the ALTS Coalition explains why this Commission's approval of the Verizon-NY Section 271 Application does not afford a basis for granting Verizon Section 271 approval in Massachusetts, thus the ALTS Coalition recommends that the Commission reject Verizon-MA's Application. Verizon-MA has failed to satisfy several of the competitive checklist items and must meet several conditions before it satisfies the rigorous requirements of Section 271. For this reason, and also due to independent, unique circumstances in Massachusetts, approval of Verizon-MA's Application would be inconsistent with the public interest.

Since Verizon has been permitted to provide in-region interLATA long distance service in New York, Verizon's performance in Massachusetts has deteriorated. In addition, Verizon's Massachusetts Application is deficient in several critical respects. First, Verizon-MA has failed to comply with this Commission's *UNE Remand Order* and *Line Sharing Order* with respect to provisioning of DSL-capable loops and subloop unbundling – items that were not at issue at the time Verizon was granted Section 271 approval in New York. Verizon-MA does not provide non-discriminatory access to unbundled loops, including DSL-capable loops, and subloops, as required by the

Commission's *UNE Remand* and *Line Sharing Orders.*[1] Second, Verizon-MA has not satisfied checklist item (iii). It continues to require pole and conduit attachment licensees to enter into one-sided, discriminatory license agreements that favor Verizon-MA and competitively disadvantage CLECs. It continues to limit the number of attachments that it will process in a single application, thus impairing the ability of CLECs to build out their facilities in the local markets. Third, Verizon-MA has not demonstrated that it provides non-discriminatory access to its Operations and Support Systems ("OSS"), thus failing to meet the competitive checklist requirements. Fourth, Verizon-MA fails to meet the checklist requirements relating to collocation at remote terminals and engages in improper billing for collocation power costs, which seriously disadvantages CLECs in their efforts to offer consumers lower prices and gain market share..

Moreover, approval of Verizon's Massachusetts Application would be inconsistent with the public interest. The particular Performance Assurance Plan ("PAP") accepted by the Massachusetts Department of Telecommunications and Energy ("Department" or "D.T.E.") is grossly inadequate compared to similar plans found reasonable by the Commission in the *Verizon-New York* and *SBC-Texas Orders*. The Massachusetts PAP remedies are not in addition to performance-based remedies available to CLECs under their interconnection agreements – CLECs must choose one or the other. Further, because the D.T.E. has invited Verizon-MA to seek exogenous cost treatment of any performance credits that it must provide under the PAP pursuant to a D.T.E.-approved price cap form of regulation, there is absolutely no assurance that Verizon-MA

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1 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999) (hereinafter "*UNE Remand Order*") and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local*

(continued...)

will suffer any adverse financial consequences if it backslides – ratepayers may pick up the tab. The New York PAP, in contrast, expressly prohibited such a perverse result. The Massachusetts PAP is also deficient because it fails to include comprehensive performance standards and metrics related to xDSL services and line sharing arrangements. Despite the Commission's clear directives to Bell Operating Company ("BOC") applicants and state commissions, Verizon-MA did not account for these services adequately in the Massachusetts PAP, and the D.T.E. refused to require such performance standards and metrics; instead, it simply abrogated its responsibility for the review and development of those standards and measures to the New York Public Service Commission. While it is the prerogative of the D.T.E. to do so, it is the duty of this Commission to find that such an approach renders Verizon-MA's Section 271 Application premature.

Verizon's Massachusetts Application is also premature due to the unique circumstances in Massachusetts pertaining to numbering resources. NXX codes in Massachusetts are strictly limited under a rationing process necessitated by an extreme jeopardy situation in Eastern Massachusetts with regard to the four existing area codes, 508, 617, 781 and 978. This situation was caused by Verizon's past inaccurate number forecasting. An April 25, 2000 order of the D.T.E. that requires a full service overlay will not create the additional numbering resources needed by CLECs until April 2, 2001 at the earliest. The public interest would not be served by allowing Verizon to enter the long distance market in Massachusetts at a time when CLECs face the very real entry barrier of lack of numbering resources required to enable local competition.

(...continued)

Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, and Fourth Report and Order, 14 FCC Rcd. 20902 (hereinafter "*Line Sharing Order*").

The Verizon's Massachusetts Application can be boiled down to the following refrain: *"Since Verizon was granted interLATA entry in New York, it should also be granted interLATA entry in Massachusetts."* Contrary to Verizon's assertions, and as the record in this proceeding demonstrates, Verizon cannot bootstrap the Commission's grant of Section 271 authority in New York into a similar approval for the Commonwealth of Massachusetts. As this Commission has emphasized, each application made by an BOC must be examined independently and on its own merits. Specifically, the issue of whether an BOC has satisfied its Section 271 obligations must be determined on a case-by-case basis after review of a totality of the circumstances and based on an analysis of the specific facts and circumstances of that particular application.[2] Under this standard, Verizon-MA's Application must fail.

The Commission's review of Verizon's Massachusetts Application comes at a critical juncture. The Commission has heard that Verizon or other BOCs may be filing additional Section 271 applications in the near future. As explained by ALTS, the Commission's review of Verizon's Massachusetts Application will provide a clear signal whether the Commission's statements regarding the showing needed for DSL, line sharing and subloop unbundling will be enforced in a case like this one, where the BOC and the state commission have each failed to follow the Commission's directives. It will also provide a clear signal as to whether BOCs may perpetuate pole and conduit attachment licenses that fail to comply with their obligations not to discriminate against

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2 *Application of Bell Atlantic Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in New York,* CC Docket No. 99-295 Memorandum Opinion and Order, (December 21, 1999) ("hereinafter, "*Verizon-New York Order*", ¶ 46, and *In the Matter of Application by SBC Communications, Inc., /Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommuniations Act of 1996 to Provide In-Region InterLATA Services in Texas,* CC Docket
(continued...)

attaching CLECs. Finally, it will test the limits to which BOCs may go and still meet the public interest criteria to be applied by the Commission. The Commission has a meaningful opportunity in this proceeding to set limits on the submission of premature Section 271 filings by Verizon in particular and BOCs in general.

(...continued)

No. 00-65, Memorandum Opinion and Order, FCC 00-238 (rel. Jun. 30, 2000) (hereinafter, "*SBC-Texas Order*"), ¶ 46.

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COMMENTS OF THE
ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES COALITION

The Association for Local Telecommunications Services ("ALTS"), Digital Broadband Communications, XO Communications (formerly NEXTLINK), and DSLnet Communications (the "ALTS Coalition"), pursuant to the Public Notice ("Notice") in the above captioned proceedings, hereby files its initial comments on the Application by Verizon-Massachusetts for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the Commonwealth of Massachusetts (the "Application").

ALTS is the leading national trade association representing facilities-based competitive local exchange carriers ("CLECs"). ALTS does not represent any of the major interexchange carriers ("IXCs"), and therefore its interest in this proceeding is singularly focused on ensuring that the Massachusetts local telephone market is truly open to competition and remains irreversibly open. In these Comments, the ALTS Coalition explains why this Commission's

approval of the Verizon-NY Section 271 Application does not afford a basis for granting Verizon Section 271 approval in Massachusetts, thus the ALTS Coalition recommends that the Commission reject Verizon-MA's Application. Verizon-MA has failed to satisfy several of the competitive checklist items and must meet several conditions before it satisfies the rigorous requirements of Section 271. For this reason, and also due to independent, unique circumstances in Massachusetts, approval of Verizon-MA's Application would be inconsistent with the public interest.

I. HISTORY OF MA PROCEEDING

On May 24, 1999, Verizon-MA notified the D.T.E. of its intention to seek Section 271 authority from the Commission. On June 29, 1999, the D.T.E. opened its inquiry into Verizon's compliance with Section 271's requirements. On August 30, 1999, Verizon certified to the D.T.E. that all checklist items could be considered during technical sessions prior to completion of OSS testing. On November 19, 1999, the D.T.E. approved a KPMG Master Test Plan. The D.T.E. conducted unsworn, but transcribed technical sessions, during November and December 1999. On January 14, 2000, the D.T.E. adopted the New York Public Service Commission's carrier-to-carrier guidelines as the performance metrics for the Master Test Plan and evaluating Verizon's compliance with Section 271. On February 16, 2000, the D.T.E. denied a request by AT&T (and supported by other CLECs) to reject KPMG's proposal to weaken its volume and stress testing of Verizon's pre-order and order OSS and staff capacity. The D.T.E. eliminated its previous requirement that KPMG use projected commercial volumes of 18 months for its transaction testing and replaced that requirement with a 6-month requirement. On May 12, 2000, the D.T.E. also denied CLEC requests that volume tests for pre-order, order and provisioning be conducted on Local Service Ordering Guidelines Release 4.

The D.T.E. received declarations from Verizon and from CLECs regarding the competitive checklist items. It propounded information requests to Verizon which included a number of requests proposed by CLECs. Hearings were conducted on these declarations and the Department supplemented its record through requests for additional information during the hearing process. Oral arguments were presented to the D.T.E. by several participants, including Verizon, during early September 2000. The D.T.E. did not permit participants to file closing written briefs or statements of position at the close of its proceeding and therefore will not have the benefit of such written statements prior to submitting its comments in this matter. Also, the D.T.E. precluded participants from presenting any information or views as to whether Verizon's Massachusetts Application was consistent with the public interest, as this Commission must find before granting Section 271 approval. The Department included in its record previous unsworn testimony that was adopted by declarants. On September 5, 2000, the D.T.E. issued an order adopting a Performance Assurance Plan. On September 22, 2000, the D.T.E. approved Verizon's September 15, 2000 revised Performance Assurance Plan. On September 27, 2000, AT&T and Rhythms Links, Inc. filed separate motions for reconsideration regarding the D.T.E.'s orders approving the Performance Assurance Plan. On September 22, 2000, Verizon filed its Massachusetts Section 271 Application with this Commission.

II. THE MASSACHUSETTS D.T.E.'S REVIEW OF VERIZON'S SECTION 271 COMPLIANCE

The Massachusetts D.T.E.'s examination of Verizon's compliance with Section 271 should be referenced by this Commission as it conducts its own examination of Verizon's Application. Nonetheless, the Commission must conduct an independent analysis of Verizon's

compliance with the competitive checklist. Under Section 271(d)(2)(B), the Commission "shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c)."[3] In requiring the Commission to consult with the states, Congress afforded the states an opportunity to present their views regarding the opening of the BOC's local networks to competition. The Commission has stated that "in order to fulfill their consultative role as effectively as possible, state commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications."[4] In evaluating the weight to accord the findings of a state commission, the Commission "will consider carefully state determinations of fact that are supported by a detailed and extensive record, and believe the development of such a record to be of great importance to [its] review of section 271 applications."[5] Unlike almost every other state commission whose BOC has appeared before the FCC requesting interLATA interexchange authority, the Massachusetts D.T.E. has chosen not to provide an advisory opinion on Verizon's application at this time. The D.T.E. did not permit participants to file closing written briefs or statements of position at the close of its proceeding and therefore will not have the benefit of such written statements prior to submitting its comments in this matter. Also, the D.T.E. precluded participants from presenting any

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3 47 U.S.C. § 271(d)(2)(B).

4 Application *of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 30 (1997) ("*Ameritech Michigan Section 271 Order*").

5 *Id.*

information or views as to whether Verizon's Massachusetts Application was consistent with the public interest, as this Commission must find before granting Section 271 approval.

Nevertheless, over the past year and a half, Verizon and numerous interested parties participated in the Department's review of Verizon's Application, amassing a record and evidence that clearly demonstrates that Verizon has not made the necessary strides to open the Massachusetts market to local competition that would warrant granting it permission to provide interLATA interexchange service in Massachusetts.

A. The Commission Must Review Verizon-MA's Application On its Own Merits

Verizon's Massachusetts Application relies almost exclusively on its assertion that because its sister company, Verizon-NY was granted Section 271 authority it should be as well. Contrary to Verizon's assertions, simply because Verizon was permitted into the in-region long distance market in New York does not mean that it has also earned that privilege in Massachusetts. Verizon-MA's Application must be reviewed on its own merits. This is not to say that the Commission should not, at a minimum, determine whether Verizon-MA has fulfilled the minimum requirements determined by the Commission in its *Verizon-New York Order* and its *SBC-Texas Order* – it should. However, as this Commission has emphasized, each application made by a BOC must be examined independently and on its own merits. Specifically, the issue of whether an BOC has satisfied its Section 271 obligations must be determined on a case-by-case basis after review of a totality of the circumstances and based on an analysis of the specific facts and circumstances of that particular application.[6] In other words, while it is true that Verizon must, at a minimum, meet the requirements that the Commission has

[6] *Verizon-New York Order* ¶ 46, *SBC-Texas Order* ¶ 46.

articulated in its *Verizon-New York* and *SBC-Texas Orders*, simply because the Commission may have found that Verizon has met the Section 271 requirements in New York does not necessarily mean that Verizon has met these requirements in Massachusetts.

Verizon-MA has failed to meet many of the standards articulated in the FCC's prior Orders granting BOCs 271 authority. In particular:

- Verizon-MA fails to provide cageless collocation and collocation at remote terminals consistent with this Commission's requirements.
- Verizon-MA has not proven that it provides non-discriminatory access to its OSS.
- Verizon-MA does not provide non-discriminatory access to unbundled loops including DSL-capable loops as required by the FCC's *UNE Remand* and *Line Sharing Orders.*
- Verizon-MA does not provide access to subloop unbundling as required by the Commission's *UNE Remand* and *Line Sharing Orders.*
- Verizon has not demonstrated that it provides non-discriminatory access to poles, conduits and rights of ways as required by checklist item (iii) of the Act.

In addition to failing to satisfy these elements of the competitive checklist, Verizon's Massachusetts Application is inconsistent with the public interest. First, because Verizon has not satisfied all elements of the competitive checklist, granting its Application would be contrary to the public interest. Even if Verizon were found to have satisfied the competitive checklist, however, approval of its Application would remain contrary to the public interest. First, Verizon-MA's PAP is not as comprehensive as the New York PAP and potentially will insulate Verizon from any potential payment of credits to CLECs by recovering those credits from its end users as part of its Alternative Regulation Plan. Second, the PAP fails to include critical DSL and line sharing performance standards and measures, thus providing no protection against backsliding in the case of advanced services. Third, Verizon's Massachusetts Application is

premature in light of the lack of adequate numbering resources in Massachusetts until April 2, 2001 at the earliest, when an all-services overlay is scheduled to be implemented.

B. Verizon Must Demonstrate Full Compliance With Each Requirement Under Section 271

BOC entry into in-region, interLATA services is conditioned on compliance with Section 271. BOCs must first apply to the Commission for authorization to provide interLATA services originating in any in-region state.[7] The Commission must then issue a written determination on each application no later than 90 days after it was received.[8] In acting on a BOC's application, the Commission must consult with the U.S. Attorney General and give substantial, but not outcome determinative, weight to the Attorney General's evaluation of the BOC's application.[9] In addition, the Commission must consult with the applicable state commission to verify that the BOC has in place one or more state-approved interconnection agreements with a facilities-based competitor[10] and that such arrangements comport with the Section 271 competitive checklist.[11] The Commission may not authorize a BOC to provide in-region, interLATA service under Section 271 unless it finds that the BOC has demonstrated that: (1) it satisfies the requirements for Track A or B entry;[12] (2) it has *fully* implemented and *is currently providing* all of the items

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7 *See* 47 U.S.C. § 271(d)(1).

8 *See id.* § 271(d)(3).

9 *See id.* § 271(d)(2)(A).

10 *See id.* § 271(d)(2)(B). BOCs may enter an application based on one of two "tracks" established under Section 271(c)(1). Track A requires the BOC to prove the presence of an unaffiliated facilities-based competitor that provides telephone exchange service to business and residential subscribers. *See id.* § 271(c)(1)(A). Track B requires the BOC to prove that no unaffiliated facilities-based competitor that provides telephone exchange service to business and residential subscribers has requested access and interconnection to the BOC network within certain specified time parameters. *See id.* § 271(c)(1)(B). Verizon is applying under Track A. *See* Application at 4.

11 The Competitive Checklist is a 14-point list of critical, market-opening provisions.

12 *See* 47 U.S.C. § 271(d)(3)(A).

set forth in the competitive checklist;[13] (3) the requested authorization will be carried out in accordance with Section 272;[14] and (4) the BOC's entry is consistent with the public interest, convenience and necessity.[15] Pursuant to the legislation, the Commission "shall not approve" the application unless the Commission finds that the BOC meets these four criteria.[16]

C. Verizon Must Satisfy the "Is Providing" Standard Under Section 271

The Commission has found that promises of *future* performance have no probative value in demonstrating *present* compliance[17]. To support its application, a BOC must submit actual evidence of present compliance, not prospective evidence that is contingent on future behavior.[18] In its evaluation of past Section 271 applications, the Commission has mandated that a BOC demonstrate that it "is providing" each of the offerings enumerated in the 14-point competitive checklist codified in Section 271(c)(2)(B).[19] The Commission has found that in order to establish that a BOC "is providing" a checklist item, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the

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13 *See id.*

14 *See id.* § 271(d)(3)(B).

15 *See id.* § 271(d)(3)(C).

16 *Verizon-New York Order* ¶ 18.

17 *Verizon-New York Order* ¶ 37. States have also adopted this standard, *see In re BellSouth Telecommunications, Inc.'s entry into InterLATA services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 6863-U, (Ga. P.S.C. Oct. 15, 1998).

18 *Id.*

19 *See* Application *of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539, ¶ 78 (1997) (citing *Ameritech Michigan Section 271 Order* ¶ 110).

checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.[20]

D. Verizon Must Satisfy the "Fully Implemented" Standard Under Section 271

To meet the required showing that it has "fully implemented" the competitive checklist under Section 271, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.[21] The Commission has determined that to comply with this standard, for those functions that are analogous to the functions a BOC provides itself, the BOC must provide access to competing carriers in, "substantially the same manner" as it provides itself.[22] The Commission has further specified that this standard requires a BOC to provide access that is equal to (*i.e.* substantially the same as) the level of access that the BOC provides itself, its customer or its affiliates, in terms of quality, accuracy, and timeliness.[23] Further, for those functions that have no retail counterpart, the BOC must demonstrate that it provides access, which offers competitors a "meaningful opportunity to compete."[24]

III. VERIZON HAS NOT FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST

The Section 271 competitive checklist was designed to require BOCs to prove that their markets are open to competition before they are authorized to provide long distance services. In enacting the competitive checklist, Congress recognized that unless a BOC has *fully* complied

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20 *See id.*

21 *Verizon-New York Orde,* ¶ 44.

22 *Id.*

23 *Verizon-New York Order* (*citing Ameritech Michigan Section 271 Order,* 12 FCC Rcd at 20618-19).

24 *Id.*

with the checklist, competition in the local market would not occur.[25] Verizon must provide the Commission with "actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior."[26] Furthermore, each and every checklist item is significant. As the Commission has consistently indicated, failure to comply with even a *single* checklist item constitutes independent grounds for denying an application for 271 authority.[27] Strict compliance with each requirement of Section 271 is the only sure way that the Commission can ensure that sustainable competition will be realized in a local market.

Verizon has not yet attained compliance with each item on the competitive checklist, and therefore, the Commission must deny Verizon's application until such time as each of the criteria are satisfied.

A. Verizon's Massachusetts Application Does Not Meet The"Fully Implemented" Standard Under Section 271

Verizon has failed to demonstrate that it "is providing" several of the most critical items contained on the competitive checklist under the "fully implemented" standard, and Verizon must be in compliance with this standard for all fourteen checklist items in order satisfy Section 271. Failure to satisfy even a single checklist item precludes a finding of compliance with Section 271. Verizon-MA has failed to meet many of the standards articulated in the FCC's prior orders granting BOCs Section 271 authorization. In particular:

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25 *Ameritech Michigan Section 271 Order* ¶ 18.

26 *Id* ¶ 55.

27 *See, e.g., BellSouth Louisiana II Section 271 Order* ¶ 50.

- Verizon-MA fails to provide cageless collocation and collocation at remote terminals consistent with this Commission's requirements.
- Verizon-MA has not proven that it provides non-discriminatory access to its OSS.
- Verizon-MA does not provide non-discriminatory access to unbundled loops including DSL-capable loops as required by the FCC's *UNE Remand* and *Line Sharing Orders*.
- Verizon-MA does not provide access to subloop unbundling as required by the Commission's *UNE Remand* and *Line Sharing Orders*.
- Verizon has not demonstrated that it provides non-discriminatory access to poles, conduits and rights of ways as required by checklist item (iii) of the Act.

Below, the ALTS Coalition discusses the legal standards that the Commission has applied in its previous evaluations of BOC applications for 271 relief, and provides a complete analysis of Verizon's Application.

B. Checklist Item (i): Verizon Does Not Provide Non-Discriminatory Access To Interconnection

Section 251 requires a BOC to allow requesting carriers to link their networks to the BOC's network for the mutual exchange of traffic.[28] To fulfill the nondiscrimination obligation under this checklist item, a BOC must show that it provides interconnection at a level of quality that is indistinguishable from that which the BOC provides itself, a subsidiary, or any other party.

A Section 271 applicant must provide or offer to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[29] Section 251(c)(2) imposes upon incumbent LECs "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network

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28 47 U.S.C. § 251.

29 *Id.* § 271(c)(2)(B)(i).

. . . for the transmission and routing of telephone exchange service and exchange access."[30] Pursuant to section 251(c)(2), interconnection must be: (1) provided at any technically feasible point within the carrier's network; (2) at least equal in quality to that provided by the local exchange carrier to itself or ... [to] any other party to which the carrier provides interconnection; and (3) provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.[31]

Section 252(d)(1) of the Act states that "[d]eterminations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of [section 251(c)(2)] . . . (A) shall be (i) based on the cost . . . of providing the interconnection . . . and (ii) nondiscriminatory, and (B) may include a reasonable profit."[32] Competing carriers have the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network.[33]

Technically feasible methods of interconnection include, but are not limited to: physical collocation and virtual collocation at the premises of an incumbent LEC and meet point interconnection arrangements.[34] The incumbent LEC must submit to the state commission detailed floor plans or diagrams of any premises for which the incumbent LEC claims that

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30 *Id.* § 251(c)(2).

31 *Id.*

32 *Id* § 252(d)(1).

33 *See* 47 C.F.R. § 51.321; *Implementation of the Local Telecommunications Provisions in the 1996 Act*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 209 (hereinafter *"Local Competition First Report and Order"*).

34 *See* 47 C.F.R. § 51.321; *Local Competition First Report and Order* ¶ 553. *Verizon-New York Order* ¶ 66.

physical collocation is not practical because of space limitations.[35] A BOC must have processes and procedures actually in place to ensure that physical and virtual collocation arrangements are available on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with section 251(c)(6) and the FCC's implementing rules.[36] In evaluating whether a 271 applicant has complied with its obligations, the Commission examines information regarding the quality of the BOC's procedures to process applications for collocation, the timeliness of provision, and the efficiency of provisioning collocation space.[37] Further, the BOC must provide interconnection that is "equal in quality . . . and indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate or any other party."[38]

1. Verizon's Collocation Offerings do not Comply with the Requirements of the Act

Verizon-MA asserts that it is currently providing collocation the same as it provides in New York and thus its collocation offerings are sufficient for 271 approval in Massachusetts.[39] In fact, the collocation arrangements that Verizon-MA offers are inferior to what Verizon is currently offering in New York. Unlike Verizon-NY, Verizon-MA refuses to convert CLEC virtual collocation arrangements to cageless collocation arrangements. Verizon has provided no justifiable technical or policy reason why it refuses to perform these conversions, particularly when it offers these same conversions in New York.

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35 *See* 47 C.F.R. § 51.321(f); *Local Competition First Report and Order* ¶ 602.

36 *Verizon-New York Order* ¶ 66.

37 *See Verizon-New York Order* ¶ 66 (citing *Second BellSouth Louisiana Order).*

38 *See Local Competition First Report and Order* ¶ 224.

39 Lacouture-Ruesterholtz Affidavit ¶ 31.

Deficiencies exist in Verizon's Massachusetts collocation service offerings. For example, Verizon-MA's proposed collocation at remote terminal tariff offering (CRTREE) fails to satisfy its obligations under the *UNE Remand Order* because as explained in more detail below, it unreasonably restricts CLEC access to collocation at many remote terminals in Verizon's network. In addition, Verizon has been systematically violating the terms of its physical collocation tariffs and commitments by charging CLECs for power costs based upon power demand not requested by CLECs and far in excess of CLECs' needs, and charging for two feeds, even though only one feed is used at a time.[40] Additionally, Verizon has charged recurring monthly charges for collocation space and power even though the central office is not yet activated, typically because of Verizon's delay.[41] The effect of these excessive and unwarranted collocation charges on local competition – based upon practices not followed by other ILECs – is devastating. ALTS has raised this issue with Verizon, to no avail.

a. Despite Doing So in New York, Verizon-MA Refuses to Provide In-place Conversion of Existing Virtual Collocation Arrangements to Cageless Collocation Arrangements

In its Application,Verizon-MA claims that it provides multiple collocation options and alternatives that essentially mirror those offered by Verizon-NY.[42] Although Verizon-MA states that it provides "collocation arrangements in the same manner as the FCC approved for Verizon-NY,"[43] this is simply not true. In fact, Verizon-NY provides collocation conversions that Verizon-MA refuses to offer. ALTS members Rhythms and Covad have repeatedly requested that Verizon-MA convert their virtual collocation arrangements to cageless arrangements.

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40 *See* Exhibit A, Declaration of Theresa M. Landers ¶ 16-17.

41 *See id.* ¶ 6.

42 Application at 13, LaCouture/Ruesterholtz Decl. ¶ 27.

Notwithstanding these requests, Verizon-MA has continually refused to implement these conversions in Massachusetts. Verizon-MA's position is that CLECs must move their virtual collocations to a secure area of the central office to convert these arrangements to cageless collocations.[44] In stark contrast to Verizon-MA's position, Verizon-NY's tariff includes an offering for in-place conversions from virtual collocation to cageless collocation.[45] In fact, Verizon-NY has been providing in-place virtual to cageless conversions in New York under a tariff since December 1999.[46] Verizon-MA, on the other hand, refuses to make the same offering available in Massachusetts and has failed to provide any justifiable explanation as to why it refuses to make this offering available in Massachusetts.

Legitimate technical and policy justifications exist for allowing in-place conversions.[47] As the New York Commission recognized when it ordered Verizon-NY to allow in-place conversions, moving a collocation from one place in the central office to another is unnecessarily costly, time-consuming, and disruptive to customer service. Verizon's version of a conversion would force a CLEC to: (1) place an application for collocation with Verizon and await the standard interval; (2) incur the costs of purchasing redundant equipment to install in the new area

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(...continued)

43 *Id.*

44 *See Comments of Rythms Links, Inc. and Covad Communications Company on Section 271 Compliance Filings of Bell Atlantic-Massachusetts and accompanying affidavidt of Robert Williams* ¶¶ 6-11. (July 18, 1999).

45 *See* New York Telephone Company, P.S.C. No. 914, Section 5, 1st Revised Page 85.

46 *See id.*

47 The Massachusetts Department required Verizon-MA to provide in-place conversions in its Decision on Tariff 17, finding that if Cageless Collocation Open Environment ("CCOE") was (i) not an available option for a particular CLEC at the time it applied for collocation; or (ii) if a CLEC's first choice was CCOE but it was not available due to space constraints, "in-place conversions of a virtual collocation arrangement to a CCOE arrangement is appropriate."Order, D.T.E. 98-57 ("Tariff 17 Decision"). On reconsideration, the D.T.E. granted Verizon-MA's request to defer compliance until the FCC's decision on this issue in its Collocation Remand proceeding.

to flash cut service from one collocation to another; and (3) disrupt customer service while the conversion occurs.

In a competitive environment, CLECs require cageless collocation to access their equipment for testing, maintenance and repair purposes. Until Verizon provides these collocation conversions to requesting carriers it should not be granted 271 authority.

b. Verizon-MA's CRTEE Tariff Does Not Comply With the Obligations Established in the *UNE Remand Order*

Similarly, Verizon-MA's proposed CRTEE tariff fails to comply with this Commission's *UNE Remand Order*. In that Order, this Commission recognized that "the remote terminal has, to a substantial degree, assumed the role and significance traditionally associated with the central office,"[48] and therefore, required ILECs to provide collocation at remote terminals, so that CLECs may offer DSL service to customers served over DLC facilities.[49] The remote terminal is the interface point between the copper and fiber portions of the loop. In order to provision DSL services over loops served by fiber, CLECs need to access the copper portion of the loop at the remote terminal. Therefore, under the *UNE Remand Order*, ILECs, including Verizon-MA, must provide collocation at remote terminals.

In support of its assertion that it satisfies its collocation obligations, Verizon-MA cites its CRTEE tariff.[50] According to Verizon-MA, "CRTEE will provide for collocation of CLEC equipment in [Verizon-MA's] remote terminal equipment enclosures where technically feasible

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48 *UNE Remand Order* ¶ 218.

49 *Id.*

50 LaCouture/Ruesterholtz Declaration ¶ 59.